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Coalition of Arizona, Inc.

ARIZONA SUPREME COURT

In the matter of PETITION TO
AMEND RULE 122, RULES OF
SUPREME COURT OF ARIZONA

Supreme Court No. R-07-0016

**COMMENT OF THE FIRST
AMENDMENT COALITION OF
ARIZONA, INC. IN SUPPORT OF
THE PETITION TO AMEND
RULE 122 WITH SUGGESTED
FURTHER REVISIONS**

The First Amendment Coalition of Arizona, Inc. ("Coalition") supports the petition to amend Rule 122 and the revisions to that petition suggested by the Maricopa County Superior Court. In addition, the Coalition suggests revisions to subparagraphs (r) and (s) of Rule 122 to reflect updated camera technology. The Coalition's suggested revisions together with the revisions suggested by the petitioners and the Maricopa County Superior Court are shown in Attachment A.

The Coalition is a non-profit corporation comprised of the Arizona Newspapers Association, Arizona Broadcasters Association, the Arizona-New Mexico Cable Communications Association, the Society of Professional Journalists and the Arizona Press Club. The Coalition supports amending Rule 122 to create a presumption in favor of camera access to court proceedings for three reasons.

First, technological advances in camera technology during the past quarter century have made it increasingly unlikely that photographic coverage would distract participants or detract from the dignity of the proceedings or that any courtrooms are too small or are otherwise structurally inadequate to allow for camera coverage. See Rule 122(b)(iv) and (v).

Second, one of this Court's original goals in allowing for photographic coverage of court proceedings has become reality during the past few years. Live, unfiltered "gavel to gavel" coverage of Arizona court proceeding is now starting to become available on the World Wide Web. In 2007, KTVK-TV's website, azfamily.com, carried live streaming video of an entire trial from Maricopa County Superior Court.

Third, while the majority of trial judges continue to give "due consideration" to the six factors listed in Rule 122(b) when deciding whether to permit camera coverage, the Coalition has noticed a significant minority of judges in recent years who seemingly have relied upon the fact that their rulings cannot be challenged and simply denied camera requests without giving the "due consideration" contemplated by Rule 122(b).

In the 26 years since this Court amended what was then Rule 45, Canon 3(a)(7) to provide judges with the discretion to permit photographic coverage of court proceedings, the Coalition's members and its attorneys have been involved in hundreds of matters in courts throughout Arizona involving camera coverage.

During those 26 years, camera coverage has become increasingly routine in Arizona courts due to several factors. First, the feared negative effects of camera coverage on courtroom proceedings have not been realized. Second, the presence of video cameras in all aspects of our daily lives is far more prevalent than it was 26 years ago. Third, video and still photography is far less obtrusive than it was 26 years ago. Today's digital cameras are smaller, silent and operate without artificial lighting. Video cameras that are now used in courtrooms do not require the bulky cables or attachments that were necessary even a decade ago. In adopting amendments to its cameras in the court rule that are similar to those proposed here, the New Hampshire Supreme Court observed that:

“[I]n the 1960s and 1970s, such technology was considered bulky and distracting, and detracted from the integrity of court proceedings. . . . Advances in modern technology, however, have eliminated any basis for presuming that cameras are inherently intrusive. In fact, the increasingly sophisticated technology available to the broadcast and print media today allows court proceedings to be photographed and recorded in a dignified unobtrusive manner, which allows the presiding Justice to fairly and impartially conduct court proceedings. Radio and television broadcasts are important ways by which citizens receive news. They are effective channels of news transmission because they can carry the unfiltered content of proceedings directly to the public.

In re Petition of WMUR Channel 9, 813 A.2d. 455, 459 (N.H. 2002).

The ability to carry unfiltered proceedings directly to the public was one of the goals of this Court when it allowed cameras into Arizona courtrooms in 1982. The advances in camera technology and growth of the Internet have made it more practical to provide the public with unfiltered coverage of entire trials, opening and closing statements, or the testimony of key witnesses in a trial of wide ranging public impact. Within the past year, KTVK-TV carried the entire trial of accused Baseline Rapist Mark Goudeau on its website, azfamily.com. Likewise, in 2004,

azcentral.com carried the entire testimony of Bishop Thomas O'Brien during his trial for leaving the scene of a fatal automobile accident.

For the most part, Rule 122 has worked well. The Coalition has participated in many meetings and seminars with the judiciary to discuss and better understand the competing concerns, interests and rights that arise with camera coverage of various types of court proceedings. In the past few years, however, the Coalition has noticed an increased hostility among a significant minority of judges to camera coverage. Some judges are now denying such requests without explanation or an opportunity to be heard. Such blanket denials of camera coverage have been puzzling given not only this State's successful 26-year experience of cameras in the courtroom, but also the fact that cameras are far less obtrusive today.

The proposed amendments to Rule 122 will assure that all courts give "due consideration" to the six factors listed in Rule 122(b) when deciding whether to prohibit or limit camera coverage. The Coalition believes that for judges who have provided such "due consideration" in the past, the decisions reached under the amended rule will be the same as those arrived at under the current rule. What hopefully will change, however, are courts denying camera coverage for little or no reason with the assurance that their decisions are beyond appellate review. As a practical matter, under the abuse of discretion standard proposed by the comment of the Maricopa County Superior Court, an appellate court would overturn a lower court's camera ruling only in those instances where the trial court had failed to give the due consideration mandated by Rule 122(b).

In addition to supporting the Petition and the revisions suggested by the Presiding Judge of the Maricopa County Superior Court, the Coalition suggests two other revisions to Rule 122 to reflect advancements in camera technology. The Coalition proposes the last sentences of subparagraphs (r) and (s) be deleted.

The Coalition proposes that the last sentence in subparagraph (r) be rewritten to read:

“In this regard, the presiding judge may consider a non-digital still camera acceptable if it is accompanied by a device that effectively muffles camera sounds.”

Conclusion

Rule 122 should be amended as set forth in Attachment A to reflect the improvements in camera technology and the fact that society is far more familiar and at ease with video cameras than it was 26 years ago. Creating a presumption in favor of camera access to court proceedings not only recognizes these technological and societal changes, but also further promotes the mandate of Article II, § 11 of our state constitution that “[j]ustice in all cases shall be administered openly”

May 20, 2008

Respectfully submitted,

PERKINS, COLE BROWN & BAIN P.A.

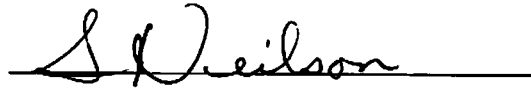
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A handwritten signature in black ink, appearing to read "S. J. Wilson", is written over a solid horizontal line.

ATTACHMENT A

Rule 122. Electronic and Photographic Coverage of Public Judicial Proceedings

Electronic and still photographic coverage of public judicial proceedings ~~in the courtroom and areas immediately adjacent thereto~~ **CONDUCTED BY A JUDICIAL OFFICER** during sessions of court may be permitted in accordance with the following guidelines:

(a) No electronic or still photographic coverage of juvenile court proceedings shall be permitted, except that such coverage may be permitted in adoption proceedings for the purpose of memorializing the event, with the agreement of the parties to the proceeding and the court.

(b) Electronic and still photographic coverage of public judicial proceedings other than the proceedings specified in paragraph (a) above may be permitted in the ~~sole discretion of the judge of the particular proceeding~~ giving due consideration to the following factors:

(i) The impact of coverage upon the right of any party to a fair trial;

(ii) The impact of coverage upon the right of privacy of any party or witness;

(iii) The impact of coverage upon the safety and well-being of any party, witness or juror;

(iv) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;

(v) The adequacy of the physical facilities of the court for coverage: ~~and~~

(vi) Any other factor affecting the fair administration of justice; **AND**

(vii) THE TIMELINESS OF THE REQUEST PURSUANT TO SUBSECTION (f) OF THIS RULE.

(c) THE JUDGE MAY LIMIT OR PROHIBIT ELECTRONIC OR STILL PHOTOGRAPHIC COVERAGE ONLY AFTER MAKING SPECIFIC, ON-THE-RECORD FINDINGS THAT THERE IS A SUBSTANTIAL LIKELIHOOD OF HARM ARISING FROM ONE OR MORE OF THE ABOVE FACTORS THAT OUTWEIGHS THE BENEFIT TO THE PUBLIC OF CAMERA COVERAGE.

~~(e)-(d)~~ Electronic and still photographic coverage of the appearance or testimony of a particular witness may be prohibited if ~~in the sole discretion of the judge of the proceeding~~, the judge determines that such coverage would have a substantially greater adverse impact upon the witness or his or her testimony than non-electronic and non-photographic coverage would have.

~~(d) Nothing in paragraph (b) or (c) above shall be construed as requiring the judge of the particular proceeding to state grounds or make findings in support of the determination to permit, limit or preclude electronic and still photographic coverage, and the exercise of the judge's~~

~~discretion in limiting or precluding such coverage shall not be subject to judicial review.~~

(c) The law generally applicable to inclusion or exclusion of the press or public at court proceedings or during the testimony of particular witness shall apply to the coverage hereunder.

(f) Requests by the media for coverage shall be made to the judge of the particular proceeding sufficiently in advance of the proceeding or portion thereof as not to delay or interfere with it. **UNLESS THE JUDICIAL PROCEEDING IS SCHEDULED ON LESS THAN THREE DAYS NOTICE, THE REQUEST TO TAPE OR PHOTOGRAPH A PROCEEDING MUST BE MADE NO LESS THAN TWO DAYS IN ADVANCE OF THE HEARING.** The judge shall notify all parties and witnesses of the request. **IF THERE IS ANY OBJECTION TO A REQUEST FOR CAMERA COVERAGE OR AN ORDER ALLOWING ELECTRONIC OR STILL PHOTOGRAPHIC COVERAGE, THE COURT SHALL HOLD A HEARING PROMPTLY.**

(g) Objections of a party to coverage must be made on the record prior to commencement of the proceeding or portion thereof for which coverage is requested. Objections of a non-party witness to coverage of his or her appearance or testimony may be made to the judge at any time. Any objection not so made will be deemed waived. ~~This provision shall not diminish the judge's authority to preclude or limit coverage of a proceeding in the judge's sole discretion as above provided.~~

(h) Nothing herein shall alter the obligation of any attorney to comply with the provisions of the Arizona Rules of Professional Conduct governing trial publicity.

(i) Individual journalists may use their personal audio recorders in the courtroom, but such usage shall not be obtrusive or distracting and no changes of tape or reels shall be made during court sessions. In all other respects, news reporters or other media representatives not using cameras or electronic equipment shall not be subject to these guidelines.

(j) No media film, videotape, still photograph or audio reproduction of a judicial proceeding shall be admissible as evidence in such proceeding or in any retrial or appeal thereof.

(k) Coverage of jurors in a manner that will permit recognition of individual jurors by the public is strictly forbidden. Where possible, cameras should be placed so as to avoid photographing jurors in any manner.

(l) **ABSENT EXPRESS PERMISSION OF THE COURT, there shall be no audio recording or broadcasting of conferences in the courtroom BUILDING between attorneys and their clients, between attorneys, or between attorneys and the court OF JURY INTERVIEWS OR IN ANY PART OF THE COURT BUILDING WHERE A JUDICIAL PROCEEDING IS NOT BEING CONDUCTED.**

(m) It shall be the responsibility of the media to settle disputes among media representatives, facilitate pooling where necessary, and implement procedures which meet the approval of the judge of the particular proceeding prior to any coverage and without disruption to the court. If

necessary the media representatives shall elect a spokesperson to confer with the court.

(n) No more than one television camera and one still camera mounted on a tripod, each with a single camera operator, shall be permitted in the courtroom for coverage at any time while court is in session. The broadcast media shall select a representative to arrange the pooling of media participants. The court shall not participate in the pooling agreement.

(o) The judge of a particular proceeding shall, in a manner which preserves the dignity of the proceeding, designate the placement of equipment and personnel for electronic and still photographic coverage of that proceeding, and all equipment and personnel shall be restricted to the area so designated. Whenever possible, media equipment and personnel shall be placed outside the courtroom. Videotape recording equipment not a component part of a television camera shall be placed outside the courtroom. To the extent possible, wiring shall be hidden, and in any event shall not be obtrusive or cause inconvenience or hazard. While court is in session, equipment shall not be installed, moved or taken from the courtroom, nor shall photographers or camera operators move about the courtroom.

(p) All persons engaged in the coverage permitted hereunder shall avoid conduct or dress which may detract from the dignity of the proceedings.

(q) If possible, media equipment shall be connected to existing courtroom sound systems. No flash bulbs, strobe lights or other artificial lights of any kind shall be brought into the courtroom by the media for use in coverage of a proceeding. Where the addition of higher wattage light bulbs, additional standard light fixtures, additional microphones or other modifications or improvements are sought by the media, the media, through their spokesperson, shall make their recommendations to the presiding judge of the Superior Court, who may direct whatever modifications or improvements deemed necessary. Any such modifications or improvements shall be made and maintained without public expense.

(r) Television or still cameras which produce distracting sound shall not be permitted. In this regard, the presiding judge may consider a **NON-DIGITAL** still camera acceptable ~~so long as it is contained in a "blimp" system or is the type of camera such as a Nikon F4 with a Nikon CS-13 camera blimp (otherwise known as a "corduroy sock") which~~ **IF ACCOMPANIED BY A DEVICE THAT** effectively muffles camera sounds.

(s) Cameras and microphones used in the coverage permitted hereunder shall meet the "state of the art." A camera or microphone shall be deemed to meet the "state of the art" when equal in unobtrusiveness, technical quality and sensitivity to equipment in general usage by the major broadcast stations in the community in which the courtroom is located. ~~The current "state of the art" for television cameras shall be met by cameras meeting or exceeding the performance levels of the RCA TK-76 camera system or the Ikegami HL-77 camera system or the Sony BP300 camera system.~~

(t) Any questions concerning whether particular equipment complies with these guidelines shall be resolved by the presiding judge of the Superior Court or designee.

(u) To facilitate implementation of this rule, the presiding judge of the Superior Court may appoint an advisory committee to make recommendations regarding improvements affecting media coverage of judicial proceedings.

(v) In the case of coverage of proceedings in the Arizona Supreme Court and Courts of Appeal, references herein to the “judge of the particular proceeding” or the “presiding judge of the Superior Court” shall mean the Chief Justice of the Arizona Supreme Court or the Chief Judge of the Court of Appeals, as the case may be.

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